



Finance

Purchasing Division
305 Chestnut Street, 5th Floor
Post Office Box 1810
Wilmington, NC 28402-1810

910 341-7830
910 341-7842 fax
wilmingtonnc.gov
Dial 711 TTY/Voice

February 15, 2016

RE: Request for Proposal – The Management and Operations for the City of Wilmington’s Three (3) Swimming Pools
RFP No. S12-0316

Dear Sir or Madame:

This Request for Proposal (RFP) will provide your firm with sufficient information to enable you to prepare and submit a qualifications statement for the Management and Operations for the City of Wilmington’s Three (3) Swimming Pools. Proposal documents for submission are attached.

The RFP includes a preliminary scope of work and general terms and conditions of any subsequent contract. The scope of services, as defined herein, may be modified after final selection of the contractor. The general terms and conditions are part of any submitted proposal and will be incorporated into any subsequent contract. Submission of a statement shall constitute acceptance of these terms and conditions. Conditional responses may be rejected.

Upon receiving this proposal, email audrey.foster@wilmingtonnc.gov to register as a prospective respondent. Failure to register may result in your firm not receiving proposal addenda. All addenda will be posted to the City website at www.wilmingtonnc.gov.

In order for your RFP to be considered responsive, it must adhere to the submittal requirements that follow. This is a fixed fee project. The successful Contractor will be selected based on the quality, quantity and best value of services provided for the available budget.

After the most qualified firm is determined by the City, the staff will enter into negotiations with the firm to better define the final scope of work. If for any reason the City and the selected firm cannot agree on a scope for the fee available, the City will enter into negotiations with the next most qualified firm.

It is the goal of the City to promote local and minority business participation in all construction and service contracts. Therefore, in accordance with the City of Wilmington's MBE/DBE Policy, the Contractor shall make a good faith effort to identify and hire minority subcontractors for this project. A complete copy of the City's MBE/DBE policy is available at my office.

Questions concerning the proposed contract terms and conditions should be addressed to my office. I hope to receive your proposal for this service.

Sincerely,

Daryle L. Parker
Purchasing Manager

Enclosure

cc: Steve Harrell, Community Services Director
Amy Beatty, Superintendent of Parks and Recreation

REQUEST FOR PROPOSALS FOR THE MANAGEMENT AND OPERATIONS FOR THE CITY OF WILMINGTON'S THREE SWIMMING POOLS

Introduction

The City of Wilmington operates three public, outdoor swimming pools described below:

- **2131 Carolina Beach Road**, 188,000 gallon pool, handicap accessible, lane lines, lane markers, diving blocks, slide, and bathhouse. Built in 1976
- **410 South 10th Street**, 188,000 gallon pool, handicap accessible, lane lines, slide, and bathhouse. Built in 1976.
- **750 Best Street**, 144,000 gallon pool, handicap accessible, lane lines, and bathhouse. Built in 1983.

Background

The pools are open from Memorial Day weekend through Labor Day. All operations and maintenance since the pools' openings have been conducted by the City of Wilmington. Pool operations consist of programs/classes, a swim team and open swim. The average annual attendance for open swim at the three pools combined totals 19,000.

Purpose

This is a Request for Proposals for professional management and comprehensive operational services for the City of Wilmington's three swimming pools. The Operator ultimately selected will be expected to operate the facility and provide all personnel, labor, equipment, materials, tools, services, and special skills required to meet the requirements of this request.

Proposal Submittals

To be given consideration, your Proposal should include the following information, completed in full.

1. A one-page Letter of Interest that includes a synopsis and qualifications of the organization, and the qualifications, including the number of years with the company, of the organization's executive director and aquatics program manager.
2. Executive Summary: Describe the organization's understanding of the project. Include a summary containing highlights of the Proposal approach, describing how the prospective Operator intends to meet the requested services.
3. A copy of any current certification/licenses that qualify the organization to operate the facilities.
4. An organizational chart.
5. Profiles of organization's team members, including number of employees, location and relevant experience with pool management for at least five (5) consecutive years.

6. Resumes of the director and staff identified as having a major role in the management of the pool.
7. Staffing plan demonstrating experience in recruitment, training, and retention of qualified pool staff.
8. Cost of Providing Services: The cost for providing the requested services will not be the sole criteria upon which the Proposal is evaluated; however, each prospective Operator shall provide an estimated budget showing all costs involved in operating the facility.
9. Proof of Insurability: A letter of commitment or certificate of insurance from an acceptable insurance company setting forth that insurance coverage, at a minimum in the types and amounts listed in the scope of services, will be available at the time of commencement of a professional services agreement. The City reserves the right to request additional insurance coverages and amounts through the final agreement negotiated between the City and the selected proposer.
10. Additional Information: The Proposal should also contain elements that demonstrate a clear understanding of the City of Wilmington and the mission of the Community Services Department **as well as a business model that results in a fair and reasonable profit for the operator while returning some revenues to the City of Wilmington.**

Items to be Submitted

Six (6) hardcopies of the proposal and an electronic version (PDF format) on a flash drive must be submitted to Daryle L. Parker, Purchasing Manager 305 Chestnut St. 5th Floor Wilmington, NC 28402 **on or before, March 15, 2016 by 3 pm., EST.** The City shall not be responsible for any expense incurred by the firm in preparing and submitting a proposal. All proposals submitted become the property of the City.

Questions concerning this RFP should be directed to the Project Manager. Questions may be submitted no later than one week prior to the final submission deadline. All questions and answers regarding the RFP may be shared with all contractors known to be interested in submitting a proposal.

Project Manager for the City of Wilmington:

Amy Beatty
Superintendent of Parks and Recreation
Email: amy.beatty@wilmingtonnc.gov
Phone: 910-341-4604

Overview of Work/Scope of Services

1. The operator will be responsible for the recruitment and, if necessary, training of qualified staff for the pool. At a minimum, the pools will require a Certified Pool Operator, Head Lifeguards, Lifeguards, and personnel to operate the admission counter and any proposed concession areas. The proposal should include a timeline for recruitment and training of individual employees.
2. The pool shall be open a minimum of seven days a week from Memorial Day to Labor Day. Open public swim shall, at a minimum, be during the hours of 1:00pm and 5:00pm.

3. Training: Operator shall conduct all required staff trainings and certifications as necessary to maintain certifications of staff, and shall keep records of all training documentation and certifications of any staff or employee associated with pool operations other than City of Wilmington personnel.
4. The City will pay for all utilities.
5. The Operator shall show proof of Workers Compensation and Employers Liability Insurance, including "Stop Gap" coverage; Comprehensive General Liability Insurance; proof of North Carolina sales tax license and food and beverage license if applicable.
6. The City will be responsible for repairs, notwithstanding skimmer lids and baskets. All repairs will be completed in a timely manner. The Operator will try and prevent losses and damages to City-owned property during hours of operation. Damaged or malfunctioning equipment should be reported immediately to the Parks and Recreation Superintendent. If not reported, the Operator will be responsible for damages or replacement, beyond normal wear and tear.
7. The proposal shall include an understanding of the following coordination and maintenance items for the Pool Operator:
 - a. The City will maintain the pump room and chemical room including all pumps and piping.
 - b. Through coordination with the Parks and Recreation Superintendent, the Operator will supply all of the sodium hydrochloride and all necessary chemicals to operate the pool.
 - c. The Operator shall be responsible for maintaining the stabilizer after the health department has issued a permit to open the pool.
 - d. The Operator shall be responsible for repairs to all skimmer lids and baskets.
 - e. The Operator shall coordinate with the Superintendent of Parks and Recreation or her designee pre-opening and closing/winterizing duties. These duties shall be the responsibility of the Operator.

Pre-opening duties that shall be performed include:

- a. Setup and prepare for usage of all movable equipment, including tables, chairs, lounges, lifeguard chairs, etc.
- b. Clean, inspect and prepare vacuuming equipment
- c. Inspect and prepare all hoses
- d. Inspect and clean all gutters and drains
- e. Drain and acid wash pools
- f. Fill pools
- g. Inspect ladders, clean lifeguard chairs and lounge furniture on pool deck
- h. Clean bathhouse: locker and restroom/changing areas, lifeguard lounges
- i. Clean outdoor areas: pool deck, front entrance, storage area, fence line
- j. Inspect, charge and place handicap lift
- k. Circulate water through the filtration system
- l. Through coordination with the Parks and Recreation Superintendent or her designee, furnish, store and inject necessary chemicals for the operation of the pools
- m. Inspect and prepare filter system
- n. Report any and all operating deficiencies to the City
- o. Other items as may be assigned in the operations agreement

p. Pools shall be ready for operation at least ten (10) days before opening day

Winterizing duties that shall be performed include:

- a. Inspect pumps and motors and report any and all malfunctioning equipment to the City
- b. Remove and store movable equipment
- c. Drain and store hoses
- d. Drain filtration system
- e. Remove and store all plugs from plumbing
- f. Backwash filters and inspect for defects. Clean elements, inspect for defects
- g. Drain and re-lubricate chemical feeders
- h. Leave all valves at appropriate settings
- i. Store all equipment in a clean and organized fashion
- j. Inspect all plumbing and electrical systems and report any and all malfunctioning equipment to the City
- q. Clean bathhouse: locker and restroom/changing areas, lifeguard lounges
- k. Clean outdoor areas: pool deck, front entrance, storage area, fence line
- l. Drain all pools and plumbing; blow all lines free of water
- m. Clean lint traps
- n. Complete an end of the season inspection and a written report provided to the Parks and Recreation Superintendent. The Operator shall perform reasonable inspections of all pool machinery and equipment and advise the City of needed repairs and/or replacement of defective, worn or damages equipment in the year-end written report

Daily operational duties that shall be performed include:

The Operator will use reasonable care and diligence to provide the following services for the actual operation of the pools:

- a. Complete a daily documented (written) safety check of the pool complexes, including the pool, slides, lounge and lifeguard furniture, admission/locker area and restroom/shower area.
- b. Check and test all safety equipment
- c. Clean entire complex. Cleaning should occur prior to opening to the public. Cleaning should also continue to take place throughout the operating day in order to provide a safe, healthy and aesthetically pleasing environment to the public. Prior to closing, Operator should straighten deck, close umbrellas, empty trash, and take trash to dumpster.
- d. Enforce all rules and regulations stipulated by the City and suggest and advise with regard to additional rules and regulations for the operation of the pools.
- e. Maintain tests and records as stipulated by the City and suggest and advise with regard to additional rules and regulations for the operation of the pools.
- f. Maintain accident and injury reports and notify the Parks and Recreation Superintendent immediately upon occurrence. Operator staff is prohibited from speaking to the media regarding accidents/incidents at the facility at pool facilities. All media inquiries must be directed to the Parks and Recreation Superintendent.

- g. Furnish and supply first aid kits adequate to the size and operation of the pools. The first aid kit should carry supplies for a minimum of 100 people and at a minimum include: adhesive bandages, sterile pads, gauze pads, eye pads, tape, dressings, elastic bandage, antiseptic, rescue blanket, scissors, tweezers, latex gloves, clean wipes, eye wash, elastic gauze, butterfly closure, large bandage patch, pocket mask with a one-way valve, and a bodily fluid exposure kit
- h. Maintain and operate filter equipment in accordance with New Hanover County Health Department requirements as stated in the New Hanover County Aquatic and recreational Facilities Code. Hair and lint strainers on all pumps and associated filtering devices must be regularly monitored and cleaned as needed.
- i. Pools must be vacuumed daily and be free of all debris when the pools are open to the public.
- j. Back-wash filter system as necessary
- k. All trash receptacles are to be emptied once a day or more frequently as needed in order to keep area as clean as possible. Accomplishment of this task will reduce the presence of bees and wasps.
- l. Trash shall be transported to the dumpster each evening.
- m. Operator shall maintain a record of all problems, complaints, and suggestions brought to their attention. Complaints and suggestions should be handled immediately by staff when appropriate and reasonable. All suggestions and complaints should be reported to the Parks and Recreation Superintendent.
- o. A representative from the Operator shall meet with the Parks and Recreation Superintendent or her designee weekly or as to a schedule determined by the Parks and Recreation Superintendent to address operations.
- p. The Operator must maintain detailed records of any rescues describing the circumstances surrounding the indigent and denoting the specific location of the rescue. This information must be provided to the Parks and Recreation Superintendent minimally within one day or immediately depending on the severity of the incident.
- q. The successful operator shall abide by all City rules and ordinances.

Fee Schedule

Accessibility to the City's pools is a priority for City officials and staff. The prices for admission to the pools are set by the Wilmington City Council. The successful Operator will be responsible for charging all admission fees to the pools. No fees in excess of those provided for by Council may be charged without a written request for a supplemental appropriation or waiver to be considered by Council. The fee schedule for the pools shall reflect what has been set by Council at the time of the signing of the contract. Current pool admission fees as of the date of this RFP are subject to change per City Council's discretion.

Notwithstanding the foregoing, there are no restrictions on prices the operator may charge for any food and beverage concessions Operators may include in their proposals. Operator shall retain all concession revenues.

POOL ADMISSION FEES

| | | |
|----------------------|----------|--------|
| Individual Admission | | |
| | Adult | \$2.00 |
| | Children | \$1.00 |

| | | |
|-------------------|---|----------------------------------|
| Group Reservation | | |
| | Organizations in corporate City limits | \$2.00/Adults \$1.00 Children |
| | Organizations outside corporate City limits | \$3.00/Adults \$2.00/Children |

Selection Criteria

1. Understanding of the scope of work including the prospective operator strategy for carrying out the needed work
2. The programming proposed to be offered
3. Past experience and performance of proposed Operator in managing such programs including length of time of experience
4. Technical competencies of the assigned personnel; experience performing similar tasks and specialized experience, including length of time in experience
5. Experience in dealing with governmental entities and references of municipalities or other governmental entities currently served
6. Operator expertise and ability to successfully handle public relations and communications with City staff relative to all phases of the program
7. Conformance to the specified RFP submittal requirements
8. Proposals are to be ranked on the basis of qualifications and not fees

Interviews

Each proposal will be ranked by the Selection Committee based on above factors. Interviews will be conducted with the top three candidates.

The City reserves the right to re-advertise and reject any or all proposals which are deemed to be non-responsive, late in submission, or unsatisfactory. The City of Wilmington shall have no obligation to award a contract for services as a result of this RFP.

REQUEST FOR PROPOSAL

The Management and Operations for the City of Wilmington's Three (3) Swimming Pools

- A. The fee below must include all professional services, personnel, labor, equipment, materials, tools and special skills required. Do not include cost of "Additional Services" outside the scope of work with response to this item.

Total Fee: \$ _____

- B. Additional Services (Optional):

Any other related and recommended products or services not specified in this RFP which may be considered essential or beneficial by the firm. These services should be priced separate from Not to Exceed Fee Above:

\$ _____

PROPOSAL CERTIFICATION

Bidders Signature: _____ **Date:** _____

By Signing above I Certify that I have carefully read and fully understand the information contained in this RFP; and that I have the capability to successfully undertake and complete the responsibilities and obligations of the Proposal being submitted and have the authority to sign Proposal on behalf of my organization.

BY (Printed): _____

TITLE: _____

COMPANY: _____

ADDRESS: _____

TELEPHONE: _____

EMAIL: _____

The proposer supplies the information recorded below for use in the preparation of the contract documents, in event of contract award:

1. Please indicate type of business organization:

- (a) Proprietorship _____
- (b) Partnership _____
- (c) Corporation _____
- (d) Limited Liability Co. _____

2. If business is a Corporation, please answer the following questions:

Name and title of officers, authorized by Corporate Resolution, who will execute the contract on behalf of corporation (generally President and Secretary).

Firm is incorporated in what state?

If firm is a foreign corporation, does firm have a certificate of authority from the North Carolina Secretary of State? _____

3. If business is a Partnership, please answer the following:

Name in full or all general partners and addresses:

Is this a limited or general partnership? _____

If a limited partnership, what is state of registration? _____

If business is a foreign limited partnership, does business have a certificate of authority from the North Carolina Secretary of State? _____

4. If business is a Proprietorship, please answer the following:

Name of owner: _____

5. If business is a limited liability company, please answer the following:

List the names and title of managers or member-managers who will execute the contract on behalf of the company? _____

What is state of organization? _____

If business is a foreign limited liability company, does business have a certificate of authority from the North Carolina Secretary of State? _____

6. For all bidders:

If the business operates under an assumed name, what is the assumed name?

Has a certificate of assumed name been filed in the New Hanover County Registry?

If so, please provide the recording information:

Deed Book _____ at Page _____.

STATE OF NORTH CAROLINA

PROFESSIONAL SERVICES AGREEMENT

COUNTY OF NEW HANOVER

CONTRACT NO.:

THIS AGREEMENT (hereinafter the "Agreement") is made and entered into this ____ day of _____, 20____, by and between the City of Wilmington, a North Carolina municipal corporation, hereinafter referred to as the "CITY", and _____, hereinafter referred to as the "CONTRACTOR".

W I T N E S S E T H

WHEREAS, the CITY desires to retain and engage the CONTRACTOR to perform certain professional services hereinafter described, and further that the parties hereto desire to reduce the terms of this Agreement to writing:

NOW THEREFORE, for and in consideration of the mutual promises to each other, as hereinafter set forth, the parties hereto do mutually agree as follows:

1. Term of Agreement. The term of this Agreement shall commence as of the date set forth above and continue through the _____ day of _____, 20____ unless sooner terminated as provided herein.
2. Contractor's Services. The CONTRACTOR hereby agrees to perform, in a manner satisfactory to the CITY, professional and timely services as set forth in Exhibit "A" attached hereto and incorporated herein by this reference. The parties hereto acknowledge that the terms outlined in Exhibit "A" shall be valid and enforceable to the extent they are not inconsistent with the provisions as set forth herein, and to the extent that they are inconsistent, the provisions as set forth in this Agreement shall control. The parties hereto further agree that the terms, conditions and requirements as set forth in any Request for Proposal ("RFP") put forth by CITY and responded to by CONTRACTOR shall be binding upon the parties to the extent that they do not conflict with the provisions as set forth herein, said RFP, if applicable, being attached hereto as Exhibit "B" and incorporated herein by this reference.
3. Compensation to Contractor. The CITY hereby agrees to pay to CONTRACTOR the amount of _____ dollars (\$_____) for services as provided herein. Payment will be made within 30 days after receipt of an approved invoice. In the event that CONTRACTOR should fail to provide the services as set forth above, CITY shall be entitled to a refund of its payment(s) to CONTRACTOR.
4. Termination. CITY shall have the right to terminate this Agreement at any time and without cause upon thirty (30) days written notice to the other party.
5. Records. The CITY has the right to audit all records pertaining to this Agreement both during its performance and after its completion. Further, upon termination of this Agreement, the CONTRACTOR shall deliver to the CITY all records, notes, memorandum, data, documents or

any other materials produced by CONTRACTOR in connection with services rendered pursuant to this Agreement. If compensation for expenses shall be provided to CONTRACTOR, the CONTRACTOR shall maintain all expense charge documents for a period of three (3) years following the completion of this agreement and said documents shall only be forwarded to the CITY upon request.

6. Ownership of Documents. The CONTRACTOR agrees that all materials and documents developed pursuant to this Agreement shall be the exclusive property of the CITY, and the CONTRACTOR shall retain no property or copyright interest therein. Further, upon termination of this Agreement, the CONTRACTOR shall deliver to the CITY all records, notes, memorandum, data, documents or any other materials received or obtained from the CITY in connection with services rendered pursuant to this Agreement.

7. Independent Contractor. This Agreement does not create an employee/employer relationship between the parties. It is the intention of the parties that the CONTRACTOR will be an independent contractor and not the CITY's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the federal Internal Revenue Code, the provisions of the North Carolina revenue and taxation laws, the North Carolina Wage and Hour Act, the North Carolina Workers' Compensation Act, and the provisions of the North Carolina Employment Security Law. The CONTRACTOR will retain sole and absolute discretion in the judgment of the manner and means of carrying out the CONTRACTOR's activities and responsibilities hereunder. The CONTRACTOR agrees that he/she/it is a separate and independent enterprise from the CITY; and that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the services described herein. This Agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the CITY, and the CITY will not be liable for any obligation incurred by the CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

8. Indemnity. The CONTRACTOR shall release, indemnify, keep and save harmless the CITY, its agents, officials and employees, from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials or employees of the CITY or third persons, and to all property proximately caused by, incident to, resulting from, arising out of, or occurring in connection with, directly or indirectly, the performance or nonperformance by CONTRACTOR (or by any person acting for CONTRACTOR or for whom CONTRACTOR is or is alleged to be in any way responsible), whether such claim may be based in whole or in part upon contract, tort (including alleged active or passive negligence or participation in the wrong), or upon any alleged breach of any duty or obligation on the part of CONTRACTOR, its agents, officials and employees or otherwise. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) against the CITY, its agents, officials, and employees including alleged injury to the business of any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include without limitation the costs incurred by the CITY, its agents, officials and employees, in connection with investigating any claim or defending any action, and shall also include reasonable attorneys' fees by reason of the assertion of any such claim against the CITY, its agents, officials or employees. The provisions of this Section shall also include any claims for losses, injuries or damages, and wages or overtime compensation due the CONTRACTOR's employees in rendering services pursuant to this Agreement, including payment of

reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act or any other federal or state law. The intention of the parties is to apply and construe broadly in favor of the CITY the foregoing provisions subject to the limitations, if any, set forth in N.C.G.S. 22B-1.

9. Representatives of the Parties. Sterling B. Cheatham, City Manager, is designated as the CITY's contract administrator for this Agreement. The contract administrator shall be responsible for monitoring the CONTRACTOR's performance, coordinating the CONTRACTOR's activities, approving all administrative requests by the CONTRACTOR and approving all payments to the CONTRACTOR pursuant to this Agreement. Further, any notice required to the CITY under this Agreement shall be sufficient if mailed to the CITY by certified mail as indicated below:

Sterling B. Cheatham, City Manager
City of Wilmington
P.O. Box 1810
Wilmington, NC 28402

_____ shall be the CONTRACTOR's representative for this Agreement. Any notice required to the CONTRACTOR under this Agreement shall be sufficient if mailed to the CONTRACTOR by certified mail as indicated below:

10. Other Laws and Regulations. CONTRACTOR will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances including those regarding toxic, hazardous and solid wastes and any pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. CONTRACTOR will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Management, Health Departments, and any other federal, state or local agency having jurisdiction, to insure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder. CONTRACTOR specifically acknowledges and agrees that CONTRACTOR, and any subcontractors it uses, has complied with and shall continue to comply with the provisions of the federal E-Verify program in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes. CONTRACTOR shall maintain adequate safeguards with respect to sensitive customer information in conformance with and pursuant to 16 C.F.R. §681.1 and in accordance with N.C. Gen. Stat. §132-1.10 and §75-65.

11. Insurance Requirements. The amount of insurance to be provided for all coverages listed under this section shall be not less than \$1,000,000.00, unless otherwise specified, per occurrence for claims arising from bodily injury and/or property damage, including accidental death which may arise directly or indirectly from CONTRACTOR's performance of its obligations Agreement. CONTRACTOR shall be responsible for any liability directly or indirectly arising out of professional services performed under this contract by a subcontractor which liability is not covered by the subcontractor's insurance,

a. CONTRACTOR shall maintain during the life of this contract WORKERS' COMPENSATION and EMPLOYER'S LIABILITY INSURANCE covering all of CONTRACTOR's employees to be engaged in the work under this contract, providing the required statutory benefits under North Carolina Workers Compensation Law, and Employers Liability Insurance providing limits at least in the amount of \$500,000/500,000/500,000 applicable to claims due to bodily injury by accident or disease, Whenever work under this contract includes exposure to claims under the U. S. Longshoremen's and Harbor worker's Act, such coverage shall be provided by appropriate endorsement to this policy,

b. CONTRACTOR shall take out and maintain during the life of this contract COMMERCIAL GENERAL LIABILITY INSURANCE, including coverage for INDEPENDENT CONTRACTOR OPERATIONS, CONTRACTUAL LIABILITY assumed under the provisions of this contract, PRODUCTS/COMPLETED OPERATIONS LIABILITY and BROAD FORM PROPERTY DAMAGE LIABILITY insurance coverage, Exclusions applicable to explosion, collapse and underground hazards are to be deleted when the work to be performed involves these exposures. The CITY shall be named as an additional insured under this policy. Unless otherwise specified, this coverage shall be written providing liability limits at least in the amount of \$1,000,000, Combined Single Limits, applicable to claims due to bodily injury and/or property damage arising from an occurrence.

c. CONTRACTOR shall take out and maintain during the life of this Agreement AUTOMOBILE LIABILITY INSURANCE. Such coverage shall be written on a comprehensive form covering owned, non-owned and leased vehicles.

CONTRACTOR shall furnish the schedule of insurance carried under this contract in the form of a Certificate of Insurance attested by the insurance carrier or appointed agent, indicating the type, amount, class of operations covered, effective date and expiration date of all policies. This Certificate shall be in six (6) counterparts and when the contract is signed by CONTRACTOR, a copy thereof shall be inserted in each copy of the contract documents and upon insertion shall become a part of such documents. CONTRACTOR will notify the CITY by registered mail at least twenty (20) days prior to any cancellation or non-renewal of these coverages.

12. No Presumption. None of the Parties shall be considered the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Agreement was drafted with substantial input by all Parties and their counsel, and no reliance was placed on any representations other than those contained herein.

13. Entire Agreement and Amendment. This Agreement, including any Exhibits attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the parties, and no warranties, inducements, considerations, promises or other inferences shall be implied or impressed upon this Agreement that are not set forth herein. This Agreement shall not be altered or amended except in writing signed by all Parties.

14. No Assignment. No party shall sell or assign any interest in or obligation under this Agreement without the prior express written consent of all the parties.

15. Conflict of Interest. No paid employee of the CITY shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this Agreement.

16. Non-Waiver of Rights. It is agreed that the CITY's failure to insist upon the strict performance of any provision of this Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Agreement.

17. Binding Effect. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

18. Reference. Use of the masculine includes feminine and neuter, singular includes plural; and captions and headings are inserted for convenience of reference and do not define, describe, extend or limit the scope of intent of this Agreement.

19. Interpretation/Governing Law. All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina without regard to any conflicts of law principles and subject to the exclusive jurisdiction of federal or state courts within the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard. The place of this Agreement, its situs and forum, shall be Wilmington, New Hanover County, North Carolina, and in said County and State shall all matters, whether sounding in contract or tort relating to the validity, construction, interpretation or enforcement of this Agreement be determined.

20. Saving Clause. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Agreement is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

21. Time. Time is of the essence in this Agreement and each and all of its provisions.

22. Immunity Not Waived. This Agreement is governmental in nature, for the benefit of the public. CONTRACTOR acknowledges that City reserves all immunities, defenses, rights or actions arising out of City's sovereign status under applicable law. No waiver of any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of City's entry into this Agreement.

23. Non-Appropriation. In the event no City funds or insufficient City funds are appropriated or otherwise available by any means whatsoever in any fiscal year for any payment due under this Agreement, then the City will immediately notify CONTRACTOR of such occurrence and this Agreement shall create no further obligation of the City as to such fiscal year and shall be null and void, except as to the portions of payments for which funds shall have been appropriated and budgeted. In such event, this Agreement shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to the City of any kind whatsoever.

24. Authority to Act. Each of the persons executing this Agreement on behalf of CONTRACTOR does hereby covenant, warrant and represent that the Organization is a duly

organized and validly existing _____, that the _____ has full right and authority to enter into this Agreement, and that each and all persons signing on behalf of the CONTRACTOR were authorized to do so.

25. Non-Discrimination. CONTRACTOR will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program which is the subject of this agreement because of race, creed, color, sex, age, disability or national origin. To the extent applicable, CONTRACTOR will comply with all provisions of Executive Order No. 11246 the Civil Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable federal, state and local laws, ordinances, rules, regulations, orders, instructions, designations and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this agreement and may result, at CITY's option, in a termination or suspension of this agreement in whole or in part.

26. Counterparts. This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

IN WITNESS WHEREOF, the CITY and the CONTRACTOR have each executed this Agreement in duplicate originals, one of which shall be retained by each of the parties.

CITY OF WILMINGTON

By: _____
Sterling B. Cheatham, City Manager

Approved as to Form:

William E. Wolak, City Attorney

FINANCE OFFICER'S CERTIFICATION STATEMENT

This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act.

This ____ day of _____, 20____.

Brent McAbee, Interim Finance Officer

Project Number: _____ (if applicable)

Account Number: _____

Amount of Contract: _____

Requisition/PO Number: _____

Federal ID Number: 56-6000239

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, _____, a Notary Public in said State and County, certify that Sterling B. Cheatham personally appeared before me this day and acknowledged that he is the City Manager of the City of Wilmington, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the City of Wilmington, the foregoing instrument was signed in its named by him as its Manager.

WITNESS my hand and notarial seal, this the ____ day of _____, 2016.

[SEAL]

Notary Public

My Commission Expires: _____

CONTRACTOR

By: _____ (NAME)
_____ (TITLE)

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public in said State and County, do hereby
certify that, _____ personally appeared before me this day and acknowledged
that he (she) is the _____ of _____ and acknowledged
the due execution of the foregoing instrument.

Witness my hand and official seal, this the _____ day of _____, 20____.

Notary Public

My Commission Expires:

_____ [SEAL]